



THE CITY OF NASHUA

Office of The Records Administrator

JUL 22 PM50

"The Gate City"

July 22, 2024

Ms. Julie Smith
891-0267

Via email only to cantdog@comcast.net

RE: RTK Request received Friday June 7, 2024 at 9:22am.

Dear Ms. Smith,

The City is in receipt of your request dated Friday June 7, 2024 at 9:22am, under NH RSA 91-A, the "Right-to-Know" law directed to the Mayor's Office email address and Risk Management. This response is on behalf of both departments to whom it was directed.

The request is for:

Request 1:

"All requests for use of the community flag pole, also known as the citizens flag pole, from January 2017 through the present.

Risk Management's responses to all the aforementioned requests.

All appeals to denied denied (sic) aforementioned requests.

The mayor's response to all aforementioned appeals."

The City's Risk Management Department conducted a reasonable search for available records matching your request as cited above. Please find the responsive records attached Batch #2.

As discussed on July 19, 2024, notice was provided to you that the City's email server was unavailable due to a Global Microsoft technical issue, during our phone call conversation you were informed that the responsive records for RTK2024-111AS was available for pick up, as a USB drive at the City Clerk's Office until closing at 5pm on July 19, 2024.

As discussed, agreed upon, and due to your schedule and inability to retrieve the USB drive at City Hall on July 19, 2024, you were satisfied with my notice and due diligence to provide records as an USB drive on July 19, 2024, but agreed to wait until Monday July 22, 2024 for issuance via the city's email server or schedule a time on July 22, 2024 to retrieve the USB drive at City Hall if the City's email server was not restored.

On July 22, 2024 at 9:22am, you left a voicemail on the Records Administrator's extension 3022 as notice to schedule a time on July 22, 2024 to retrieve the USB as responsive records to RTK2024-111AS, or receive updated information on the City's email server.

On July 22, 2024 at approximate 9:15am on July 22, 2024 the City's email server was restored to service. Therefore, attached is Batch 2 of responsive records for RTK2024-111AS as the final issuance of responsive records to RTK2024-111AS.

As a courtesy, attached is a copy of the City's Emergency Alert of July 19, 2024 regarding the disruption with the City's email server which was posted on the City's website.

With this letter and the enclosed documents this request is considered satisfied.

Sincerely,

/s/ Gary Perrin
Records Administrator

Enclosures
cc: Mayor's Office
Legal
Director Cummings
Jennifer Deshaies
Kimberly Grasset
RTK2024-111AS

Grassett, Kimberly

From: Mayors Office Email
Sent: Thursday, May 11, 2023 11:24 AM
To: Risk Management Dept
Subject: flag request

Hi there:

The Mayor requests that the LGBTQ flag be flown on the citizen's flagpole for the week running up to the Nashua Pride Festival and Parade, so from Monday, June 19 to the following Monday, please. Thank you!

Kathleen Palmer (*she, her*)
Communications & Special Projects Coordinator
Office of the Mayor



City of Nashua – Office of the Mayor
229 Main St., in the heart of Downtown Nashua, NH

Grassett, Kimberly

From: Grassett, Kimberly
Sent: Thursday, May 11, 2023 12:19 PM
To: Mayors Office Email
Subject: RE: flag request

We've received the request and blocked off the flag pole from June 19th to June 26th. If anything changes please let me know.

Thank You,

Kimberly Grassett | Risk Coordinator



City of Nashua – Risk Management Department
Administrative Services Division

229 Main Street, Nashua, NH 03060

Tel. (603) 589-3345

From: Mayors Office Email <NashuaMayor@nashuanh.gov>
Sent: Thursday, May 11, 2023 11:24 AM
To: Risk Management Dept <Risk@nashuanh.gov>
Subject: flag request

Hi there:

The Mayor requests that the LGBTQ flag be flown on the citizen's flagpole for the week running up to the Nashua Pride Festival and Parade, so from Monday, June 19 to the following Monday, please. Thank you!

Kathleen Palmer (*she, her*)
Communications & Special Projects Coordinator
Office of the Mayor



City of Nashua – Office of the Mayor

229 Main St., in the heart of Downtown Nashua, NH



SPECIAL EVENT APPLICATION
City Hall Plaza

Redactions of personal information
pursuant to RSA 91-A:5 IV; disclosure
would constitute invasion of privacy.

Complete the application in its entirety. Submit the application along with any additional requirements at least ten (10) calendar days prior to the event - City of Nashua, Risk Management Department, 229 Main Street, Nashua NH 03061, fax to 603-589-3359 or Risk@NashuaNH.gov.

If applicable, applicant must submit a certificate of insurance naming the City of Nashua as the certificate holder and as an additional insured; reflecting \$1,000,000/\$2,000,000 general liability insurance.

If applicable, contact the Permits Coordinator, 603-589-3276, to obtain a Permit to Encumber. Any applicant that would like to place an obstruction in the City right-of-way (sidewalk abutting the plaza) will need to obtain a Permit to Encumber. This includes signage, materials or participants.

1. Organization: 15/17
2. Address: 13 Shingle Mill Dr. Nashua, NH, 03062
3. Contact Name: Karen Thoman Contact Number: [REDACTED]
4. Name of Event: Celebrating Life
5. Requested Date(s) of Event: Jan 20, 2024 Requested Time(s) of Event: 10am ~~10:00am~~

Event Details (Please include approximate number of attendees, whether or not sidewalk will be utilized and additional details that may be pertinent to the event) If your request is to have a flag flown, but with no ceremony, please indicate as such below.

I am requesting to fly the Pro-life flag on the citizen's flag pole. I am expecting a small group of about 10 people. We will make a few remarks and raise the flag. There will be no ceremony and we will have nothing set up on the plaza. We are celebrating the overturn of Roe vs. Wade, and the right to life as a human right.

OBSERVANCE OF LAWS AND ORDINANCES

The undersigned shall faithfully observe, keep and obey all terms and conditions of the permit, laws, rules and ordinances of the City of Nashua. The undersigned shall also faithfully observe, keep and obey all laws, rules and regulations of any other governmental entity including, State and federal regulations which may apply.

INDEMNIFICATION

The undersigned shall have the power to act on behalf of the organization. The undersigned shall save and protect, hold harmless, indemnify and defend the City, its commissions, officers, agents, and employees against any and all liability, causes of action, claims, loss damages or cost and expenses arising from, allegedly arising from, or resulting directly or indirectly from any acts of the applicant or any of its officers, employees, or agents done in the performance or operations of the event, or any act done under pretended authority of this application. This agreement to indemnify and hold the City harmless shall include any costs incurred by the City in defending any action involving an act by the applicant or any of its officers, employees, or agents, and shall include attorney's fees incurred by the City.

I certify that the answers given herein are true and complete to the best of my knowledge, and I have not omitted any information. I further understand the conditions herein. False, misleading, or omitted information in my application form may disqualify the organization from holding this event.

Signature: Karen Thoman Date: 11/16/2023

(For insurance purposes; signed application serves as a contractual obligation in regards to naming the City of Nashua as an additional insured)

NOV 29 2023
Risk Management



City of Nashua
Risk Management Department
229 Main Street - Nashua, NH 03060

Jennifer L. Deshaies
Risk Manager

603-589-3350
Fax 603 589-3359

December 5, 2023

Ms. Karen Thoman
13 Shingle Mill Drive
Nashua NH 03062

RE: FLAG POLE REQUEST

Ms. Thoman:

We have reviewed your application dated November 16, 2023, requesting to fly the Pro-Life flag on the Citizen's flag pole. The flag is not in harmony with the message that the City wishes to express and endorse. Therefore, we must deny your request as the flag pole is not intended to serve as a forum for free expression by the public.

Attached please find our Flag Pole Policy and Special Event Procedures for the City Hall Plaza that can also be found on the Risk Management page of the City website

If you wish to appeal this decision it may be made to the Mayor's office within three business days of after receiving our decision. The appeal shall be in writing, stating the basis therefore and relief sought. The Mayor's office will review our decision and announce its decision as promptly as possible, but no later than ten business days after receipt of the appeal.

Sincerely,

A handwritten signature in blue ink that reads "JL Deshaies".

Jennifer L. Deshaies
Risk Management

Encl.

SPECIAL EVENT APPLICATION City Hall Plaza
FLAG POLE POLICY
SPECIALEVENT PROCEDURES City Hall Plaza

The white background symbolizes non-violence in the womb as well as the innocence of the unborn child.

The two baby feet represent the humanity of the unborn child. Baby feet have been a symbol associated with the pro-life movement since the iconic Precious Feet lapel pins were named the international pro-life symbol in 1979.

The two pink hands represent the pregnant mother, holding and protecting her child.

The circle shape formed by the hands evoke imagery of a pregnant mother's growing belly: a safe, secure, protected place for a developing child.

The two stripes again emphasize the TWO distinct human lives present in a pregnancy. The stripes also form an "equals sign," stressing that the unborn child is equally and fully human, and therefore deserving of equal human rights. The stripes can also represent the role of both the father and mother in creating and raising a child.

The colors blue and pink mean different things to different people. Traditionally, they have been the colors associated with baby boys and girls, but the two distinct colors also reemphasize the two lives present in a pregnancy: mother and child.



Pink and Blue

NOV 29 2023
Risk Management

FLAG POLE POLICY

A flag pole in front of City Hall may be provided for use by persons to fly a flag in support of cultural heritage, observe an anniversary, honor a special accomplishment, or support a worthy cause. Any group wishing to fly a flag must provide the flag. This potential use of a City flag pole is not intended to serve as a forum for free expression by the public. Any message sought to be permitted will be allowed only if it is in harmony with city policies and messages that the city wishes to express and endorse. This policy recognizes that a flag flown in front of City Hall will be deemed by many as City support for the sentiment thereby expressed, city administration reserves the right to deny permission or remove any flag it considers contrary to the City's best interest.

For More Information

For more information, please contact the Risk Management office at 603-589-3350.



Jim Donchess, Mayor
City of Nashua



Jennifer Deshaies, Risk Manager
City of Nashua



SPECIAL EVENT PROCEDURES City Hall Plaza

DEFINITIONS.

The following words and terms, when used in the Section, shall have the following meanings, unless the context clearly indicates otherwise:

- A. CITY HALL PLAZA constitutes the area extending west-to-east from the front steps of City Hall to the western edge of Main Street sidewalk and south-to-north between the outer edges of the City property bordering the sides of City Hall.
- B. EXHIBIT. Any display of artwork, including but not limited to, paintings, sculptures, arts and crafts, photographs, public service and educational presentations, and historical displays.
- C. EVENT. Any performance, ceremony, presentation, meeting, rally or reception held in the City Hall Plaza. A rally is defined as a gathering of people for the purpose of actively promoting a cause.

GENERAL.

- A. Events, exhibits or gatherings in City Hall Plaza, which may extend onto the Main Street sidewalk in front of City Hall, shall obtain a license to obstruct or encumber that sidewalk from the Division of Public Works in accordance with NRO Sec. 285-9.
- B. See also NRO Sec. 1-12 and 231, *General Penalty, Dissemination of noncommercial materials on public property; related solicitation and Distribution and posting of handbills, fliers, etc.*

ADMINISTRATION.

The Risk Manager, or designee, shall supervise the administration of procedures for the scheduling and use of City Hall Plaza and shall perform such other duties as may be imposed by ordinance, Mayor or Board of Aldermen.

LOITERING AS TO OBSTRUCT PASSAGE.

- A. No person shall stand or loiter in or on City Hall Plaza in such a manner as to obstruct the free passage of the public nor shall any such person, after being directed by a police officer to move on and disperse, on a same or subsequent day, reappear to loiter or remain so as to obstruct the free passage of the public; provided, that nothing contained in this section shall be construed to deny the right of peaceful picketing.
- B. It shall be the duty of any police officer of the City to order any person offending against the provisions of this section to move on and disperse and if the person(s) so ordered or requested do not forthwith obey, to remove them, or to cause a complaint to be made against such person(s).

REQUEST FOR USE OF FACILITIES.

Requests to schedule events or exhibits in City Hall Plaza shall be made to the Risk Manager or designee and will be scheduled, when practicable, on a first-come, first-served basis determined by the Risk Manager.

- A. No single organization or agency shall monopolize the use of City Hall Plaza.
- B. All requests must be submitted at least ten (10) calendar days prior to an event.
- C. The Special Event Application (SEACH2022) should be completed in its entirety and shall be subject to review and approval of the Risk Manager. The Risk Manager reserves the right to decline any non-compliant application for use of a public area for a given day or time period. The Applicant is to be notified as soon as a decision has been made.
- D. Any and all events may be subject to cancellation, rescheduling or relocation by the Risk Manager on a forty-eight (48) hours' notice as necessary to accommodate the needs of the City's governing body to hold public gatherings. The Risk Manager shall make every effort to reschedule use of City Hall Plaza by the applicant for any time lost.
- E. In order to schedule an event, a sponsor will be required to sign the Special Event Application acknowledging that the sponsor has read, understood and will abide by the procedures governing

the use of the public areas of City Hall Plaza; that the sponsor is responsible for damages incurred as a result of its event; that the sponsor will either restore or pay to have restored the area used for its event to the condition that existed prior to its use; and that it will indemnify and hold harmless the City of Nashua for any damage or loss arising out of its use of City Hall Plaza.

- F. A sponsor may be required to provide a certificate of insurance issued by an insurance company licensed to do business in the State of New Hampshire, protecting the sponsor and the City from all claims for damages to property and bodily injury, which may arise from operations under or in connection with the event or exhibit. Such certificate of insurance shall be reviewed and approved by the Risk Manager.
- G. A person or organization that refuses to adhere to the conditions outlined herein is subject to immediate removal from City Hall Plaza by the Risk Manager or Nashua Police Department. Nothing contained herein shall be construed as limiting prosecution under any statute or ordinance.

REQUEST FOR USE OF THE CITY FLAG POLE.

Requests to fly a flag shall be made to the Risk Manager or designee and will be evaluated in accordance with the City's flag pole policy. Applications shall include a photograph of the flag proposed and an explanation of the message intended to be conveyed. No single organization or agency shall monopolize the City flag pole.

- A. The Special Event Application (SEACH2022) should be completed in its entirety and shall be subject to review and approval of the Risk Manager. The Risk Manager reserves the right to decline any non-compliant application for use of the City flag pole for a given day or time period. The Applicant is to be notified as soon as a decision has been made.
- B. Any and all requests may be subject to cancellation, rescheduling or relocation by the Risk Manager on a forty-eight (48) hours' notice as necessary to accommodate the needs of the City's governing body. The Risk Manager shall make every effort to reschedule use of the City flag pole by the applicant for any time lost.

CONDITIONS.

- A. In order to maintain security, safety and aesthetic appearance of City Hall and its grounds, and to provide for regular maintenance, scheduled events at City Hall Plaza shall occur between the hours of 7:00 a.m. and 9:30 p.m. on a daily basis, and shall at no time block any entrance or exit of the building, or impede free access to the building by its occupants or the public.
- B. No banners may be suspended from or attached to City Hall.
- C. Stepping or climbing upon granite benches, monuments, fences, lighting fixtures, light wells, trees or parts of City Hall not intended for such purposes is prohibited.
- D. In accordance with NRO Sec. 19-1 (g) (1), picketing and the distribution of literature shall not impeded or interfere with municipal business or public access to the use of City Hall. "An unobstructed pathway at least ten (10) feet in width shall be maintained from the foot of the stairway...to the east of the Kennedy Memorial..." during hours that City Hall is open for business.
- E. Due to the presence of underground utility, electrical and drainage lines, no sign or banner shall be driven into the ground nor shall they be supported in or by any tree, monument, or other structure affixed to City Hall. Signs or banners supported by freestanding devices may not be left unattended, i.e.; an individual must be stationed within two feet of a freestanding sign or banner at all times to prevent damage to the grounds, injury to individuals and for security reasons.
- F. Use of City Hall Plaza by an individual or organization for an event or exhibit is authorized only if the event or exhibit has been scheduled with the Risk Manager in accordance with the procedures described herein.
- G. Equipment or structures of any kind that are placed on City Hall grounds in connection with an event or exhibit shall be entirely removed at the conclusion of the event or exhibit.
- H. No sound amplifying equipment may be used if sound level interferes with the conduct of public business by the departments which occupy or use City Hall or which otherwise interferes with or disrupts the comfort of nearby residents or businesses.

APPEAL

If a person or organization is aggrieved by a decision of the Risk Manager, an appeal may be made to the Mayor or designee(s) within three (3) business days of that decision. The appeal shall be in writing, stating the basis therefore and the relief sought. The Mayor or designee(s) will review the decision of the Risk Manager and announce its decision as promptly as possible, but no later than ten (10) business days after receipt of the appeal.



DISTRICT OF COLUMBIA

109 Second Street NE
Washington, DC 20002
Tel 202-289-1776
Fax 407-875-0770
LC.org

FLORIDA

PO Box 540774
Orlando, FL 32854
Tel 407-875-1776
Fax 407-875-0770

VIRGINIA

PO Box 11108
Lynchburg, VA 24506
Tel 407-875-1776
Fax 407-875-0770
Liberty@LC.org

REPLY TO FLORIDA

January 16, 2024

Via Email to Counsel

Steven A. Bolton, Esq.
bolton@nashuanh.gov
Corporation Counsel
City of Nashua, NH
229 Main Street
Nashua, NH 03061

RE: City of Nashua flag raising request

Dear Attorney Bolton:

Liberty Counsel is a national nonprofit litigation, education, and public policy organization with an emphasis on First Amendment liberties, particularly regarding religious liberty. We have affiliated attorneys across the nation, including New Hampshire.

Liberty Counsel has been contacted by several citizens of the City of Nashua (“City”) regarding the display of non-government flags on the City’s “Citizen flag pole.” We understand that one citizen made several requests to fly the “Save Women’s Sports” flag, with each of these requests being denied. Another citizen, Karen Thoman, recently requested to fly the “Pro-Life” flag on the Citizen flag pole. This request was also denied by the City, because the flag was supposedly “not in harmony with the message that the City wishes to express and endorse.” This, even though multiple other citizens and groups have made requests to fly their chosen flags, and the City granted such requests.

Based on our belief that the City has in fact created a limited public forum for the purpose of communicating ideas, we are writing to request that the City reconsider and approve Ms. Thoman’s request. Please provide a written **response by January 30, 2024, to prevent the need for further action by Liberty Counsel.**

We understand that Ms. Thoman made the formal request to fly the Pro-Life flag, a white flag with two blue and pink lengthwise stripes in the middle of which rests a circle containing the hands of a mother encircling two baby’s feet, on November 16, 2023. Ms. Thoman wished to fly

City of Nashua flag raising request
January 16, 2024
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this flag on the fifty-first anniversary of *Roe v. Wade* on January 22, 2024. A true and correct depiction of the flag follows:



On December 5, 2023, Risk Management Employee Jennifer Deshaies denied the request, stating in applicable part:

We have reviewed your application dated November 16, 2023, requesting to fly the Pro-Life flag on the Citizen's flag pole. The Flag is not in harmony with the message that the City wishes to express and endorse. Therefore, we must deny your request as the flag pole is not intended to serve as a forum for free expression by the public.

First, it is difficult to understand how a flag depicting the tiny footprints of newborn or preborn babies, lovingly encircled within a shape symbolizing a mother's womb, outside of which are a mother's hands lovingly caressing her pregnant belly is "not in harmony with the message that the City wishes to express and endorse." What is more wholesome about humanity than the miracle of life, the birth of children, and motherhood?

Second, this response fails to consider other requests for flag raisings over the past two years that were routinely approved by the City upon request by members of the public, including but not limited to the flags of half a dozen countries, the Sunshine Week Flag, the Porcupine Flag, the Pride Flag, the Cancer Awareness flag, and the Nashua Lions flag. These are not the only comparison groups, and we know of no flag requests denied by the City except for Ms. Thoman's request to fly the Pro-Life flag and previous requests to fly the Save Women's Sports flag; flags representing conservative, religious viewpoints.

This denial of Ms. Thoman's request necessitates this letter, prior to Liberty Counsel taking additional action. The City cannot claim a "governmental forum" and then in policy and practice operate a limited public forum available to all citizens (except those espousing viewpoints City Administration dislikes).¹ While the City may have had "meaningful" involvement in permitting multiple requests for flag raisings by private parties, such involvement does not obviate the creation of a limited public forum. Indeed, while the City's flag policy

¹ <https://www.nashuanh.gov/543/City-Hall-Plaza-Flag-Pole-Events>

City of Nashua flag raising request
January 16, 2024
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claims that it “is not intended to serve as a forum for free expression by the public,” the policy also acknowledges that any citizen may submit a request to be approved by the City so long as the flag is deemed to represent a “worthy cause.” As recent records requests have indicated, this is why the 2023 request by several citizens to fly the Save Women’s Sports flag was denied, because the City did not deem it to represent a “worthy cause.”

Having created a limited public forum by allowing use of the Citizen flag pole to all “worthy” causes, the City is not permitted to deny requests based on the viewpoint of the speaker. First, despite the City’s assertions to the contrary, a settled practice of allowing flag requests as a matter of course displays a municipality’s intent to create a limited public forum. *Shurtleff v. City of Bos., Massachusetts*, 142 S. Ct. 1583, 1592-93 (2022). Second, the Supreme Court and various federal courts have confirmed that organizations and individuals holding a religious viewpoint may not be subjected to discrimination on the basis of that viewpoint; nor may government consider religious viewpoint in order to censor private speech:

This Court has since made plain, too, that the Establishment Clause does not include anything like a “modified heckler’s veto, in which ... religious activity can be proscribed” based on “perceptions” or “discomfort.” *Good News Club v. Milford Central School*, 533 U.S. 98, 119, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001) (emphasis deleted). An Establishment Clause violation does not automatically follow whenever a public school or other government entity “fail[s] to censor” private religious speech. *Board of Ed. of Westside Community Schools (Dist. 66) v. Mergens*, 496 U.S. 226, 250, 110 S.Ct. 2356, 110 L.Ed.2d 191 (1990) (plurality opinion). Nor does the Clause “compel the government to purge from the public sphere” anything an objective observer could reasonably infer endorses or “partakes of the religious.” *Van Orden v. Perry*, 545 U.S. 677, 699, 125 S.Ct. 2854, 162 L.Ed.2d 607 (2005) (BREYER, J., concurring in judgment). In fact, just this Term **the Court unanimously rejected a city’s attempt to censor religious speech based on Lemon and the endorsement test**. See *Shurtleff*, 142 S.Ct., at 1587-1588; *id.*, at 1595 (ALITO, J., concurring in judgment); *id.*, at 1587, 1588-1589 (opinion of GORSUCH, J.).

Kennedy v. Bremerton Sch. Dist., 142 S. Ct. 2407, 2427-28 (2022) (Emphasis added) (quoting *Shurtleff v. City of Boston*, 142 S. Ct. 1583 (2022)).

As you may know, *Shurtleff* was a Liberty Counsel case decided two terms ago 9-0 by the Supreme Court in favor of our clients. The City of Boston censored our clients based upon religious viewpoint and denied a similar request to fly a flag as the one requested here, using a similar (specious) argument that a public forum had not been created. One of the undersigned sent a similar letter to the City of Boston in 2017. The City of Boston continued its discrimination and created a First Amendment test case with a 9-0 unanimous decision against it. Then, the City of Boston paid Liberty Counsel \$2,125,000.00 for attorney’s fees and costs.

In addition to the City of Nashua’s denial, Ms. Thoman has received from the City no standards by which the City considers which requests represent a “worthy cause,” and upon information and belief, the City uses an ad hoc process and has thus far considered requests using its unbridled discretion. Of course, “without standards governing the exercise of discretion,

City of Nashua flag raising request
January 16, 2024
Page 4

a government official may decide who may speak and who may not based upon the content of the speech or view-point of the speaker.” *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 763–64 (1988). “Without determinate standards, **post hoc rationalizations by the licensing official and the use of shifting or illegitimate criteria are far too easy...**” *Id.* at 758–59. (Emphasis added).

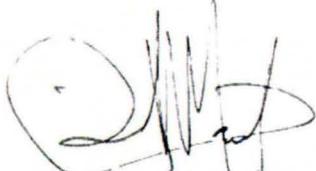
The Supreme Court has prohibited unbridled discretion in traditional public forums, and the risks of unbridled discretion “are just as present in other forums,” and the prohibition on unbridled discretion is a constant in forum analysis. *Child Evangelism Fellowship of MD, Inc. v. Montgomery Cnty. Pub. Sch.*, 457 F.3d 376, 386 (4th Cir. 2006). This has been a matter of consensus among the courts of appeals. *Id.* at 386–87 (citing *Atlanta Journal & Constitution v. City of Atlanta Dep’t of Aviation*, 322 F.3d 1298, 1306–07, 1310–11 (11th Cir. 2003); *DeBoer v. Village of Oak Park*, 267 F.3d 558, 572–74 (7th Cir. 2001); *Lewis v. Wilson*, 253 F.3d 1077, 1079–80 (8th Cir. 2001); *Summum v. Callaghan*, 130 F.3d 906, 919–20 (10th Cir. 1997); *Sentinel Commc’ns Co. v. Watts*, 936 F.2d 1189, 1200 n. 11 (11th Cir. 1991)).

The City’s addition of purported “magic words” to its website (“This potential use of the City Hall Plaza is not intended to serve as a forum for free expression by the public”) and flag pole policy (“This potential use of a City flag pole is not intended to serve as a forum for free expression by the public”) is a transparent and futile attempt to evade the First Amendment’s mandates. Notwithstanding, the City continues to operate the City Hall Plaza and its Citizen flag pole as limited public forums and has exercised unbridled discretion in the apparent approval of all flags except those that represent Christian or conservative messages.

We urge the City of Nashua to carefully consider its past practices; and not discriminate against flag raising requests based on religious or political viewpoint. We are asking that you **please provide a written response by January 30, 2024**, that Ms. Thoman’s request has been approved, **to prevent the need for further action by Liberty Counsel.**

If we do not receive this response, we will conclude that the City is indifferent to the concerns expressed herein, and Liberty Counsel will take further action to prevent irreparable harm to cherished liberties. Thank you for your attention to this request.

Sincerely,



Richard L. Mast



Hugh C. Phillips

Hugh C. Phillips^{††}

[†]Licensed in Virginia

^{††}Licensed in Florida

^{†††}Licensed in New Hampshire

City of Nashua flag raising request
January 16, 2024
Page 5

CC

Via Email

Roy McCandless††

ROYSMCCANDLESS@GMAIL.COM

Nashua City Mayor

James W. Donchess

NASHUAMAYOR@NASHUANH.GOV

Nashua Board of Aldermen

Tim Sennott

SENNOTT@NASHUANH.GOV

Ben Clemons

CLEMONSB@NASHUANH.GOV

Christopher Thibodeau

THIBODEAUCH@NASHUANH.GOV

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Melbourne Moran, Jr.

MORANM@NASHUANH.GOV

John Sullivan

SULLIVANJ@NASHUANH.GOV

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Gloria Timmons

TIMMONSG@NASHUANH.GOV

Lori Wilshire

WILSHIREL@NASHUANH.GOV

Michael B. O'Brien, Sr.

OBRIENM@NASHUANH.GOV

Grassett, Kimberly

From: Maria Ulloa [REDACTED]
Sent: Thursday, January 18, 2024 4:07 PM
To: Grassett, Kimberly
Subject: Citizen Flag Pole Request

Categories: Awaiting Response

Redactions of personal information
pursuant to RSA 91-A:5 IV;
disclosure would constitute
invasion of privacy.

CAUTION: This email came from outside of the organization. Do not click links/open attachments if source is unknown.

Hello Kimberly,

To celebrate 180 years of Dominican Republic's independence that falls on February 27th, we would like to request the opportunity to raise our flag to sing our national anthem as in past years, and at the same time, invite Mayor Jim Donchess to attend the celebration.

Due to last year's frigid conditions, if there is a conference room or similar space to have the opportunity to share words of our culture and traditions with the attendees and community, that would be greatly appreciated.

We request the following date and time:

Day: Saturday, February 17th

Time: 10am

Contact: María Ulloa, representative of Dominican Residents in Nashua, NH

Please feel free to contact me at [REDACTED] with any questions.

Thank you for your time,

Maria Ulloa

Grassett, Kimberly

From: Grassett, Kimberly
Sent: Wednesday, February 14, 2024 9:56 AM
To: Maria Ulloa
Subject: RE: Flag raising 2024

Redactions of personal information pursuant to RSA 91-A:5 IV; disclosure would constitute invasion of privacy.

Hi Maria,

I will make sure someone is available for 2:30pm to assist.

Thank You,

Kimberly Grassett | Senior Risk Coordinator



City of Nashua – Risk Management Department
Administrative Services Division

229 Main Street, Nashua, NH 03060

Tel. (603) 589-3345

From: Maria Ulloa
Sent: Tuesday, February 13, 2024 6:24 PM
To: Grassett, Kimberly
Subject: Re: Flag raising 2024

CAUTION: This email came from outside of the organization. Do not click links/open attachments if source is unknown.

Hi Kimberly,

I talked to him and he will stop at 2:30 pm tomorrow ,
Thank you very much again.

On Tue, Feb 13, 2024 at 3:57 PM Maria Ulloa [REDACTED] wrote:

Good afternoon Kimberly,
The name is Richard Salas, is the same guy of the last year. I think he's all set, but I do double check.
Thank you!

On Mon, Feb 12, 2024 at 4:47 PM Grassett, Kimberly <grassettk@nashuanh.gov> wrote:

Good Morning Maria,

This is a reminder to please contact me with a date and time you are coming in to Risk Management to retrieve the flag pole tool and get a lesson on how to use the tool. You will need to schedule so that I have the proper staff on site to assist you. Without the tool you will be unable to raise your flag at your upcoming event.

Additionally, please be advised that you will also need to return the tool **no later than February 23** as we have other groups that will need to take the tool out on loan.

Thank You,

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Kimberly Grassett | Senior Risk Coordinator



City of Nashua – Risk Management Department

Administrative Services Division

229 Main Street, Nashua, NH 03060

Tel. (603) 589-3345

From: Grassett, Kimberly
Sent: Wednesday, January 31, 2024 11:28 AM
To: 'Maria Ulloa' [REDACTED]
Subject: RE: Flag raising 2024

Good Morning Maria,

Attached please find your approved application for the use of City Hall Plaza for your event. Be sure to bring a copy of the approved application with you to the event. The plaza has been reserved for you from 9:30am to 11:30am to account for any set up and break down you may need to do. Your flag will be flown for a duration of one week. Attached you will also find the ordinances and procedures for use of the City Hall Plaza. Please review these prior to your event.

Be advised that you will need to stay within the plaza and not block the sidewalk. The plaza can hold more than 50 people easily, so this should not be a problem.

As your event is on a weekend, you will need to schedule a time to come in to the Risk Management Office at City Hall and get the flag pole tool and a lesson on how to use the tool. Please let me know a date and time that you will be arriving so that I can ensure someone is on site and available to assist you. We will

need the tool returned **no later than February 23** as we have other groups that will need to take the tool out on loan.

This email is only for approval of the use of the plaza and the flag pole. You will need to confirm with the Mayor's Office separately regarding the Mayor's presence and/or a proclamation from the Mayor. If you are still looking for space to use inside, you will need to reserve that space through the City Clerk's Office.

Should you have any questions, please let me know.

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Thank You,

Kimberly Grassett | Senior Risk Coordinator



City of Nashua – Risk Management Department
Administrative Services Division

229 Main Street, Nashua, NH 03060

Tel. (603) 589-3345

From: Maria Ulloa [REDACTED]
Sent: Monday, January 29, 2024 3:05 PM
To: Grassett, Kimberly <grassettk@nashuanh.gov>
Subject: Re: Flag raising 2024

CAUTION: This email came from outside of the organization. Do not click links/open attachments if source is unknown.

Hi Kimberly,

Can you please let me know if the attachment works! Thank you

On Mon, Jan 29, 2024 at 1:57 PM Grassett, Kimberly <grassettk@nashuanh.gov> wrote:

Hi Maria,

That document is still unable to be opened. Please attach the document to the email – it appears that this may be a link.

Thank You,

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disclosure would constitute
invasion of privacy.

Kimberly Grassett | Senior Risk Coordinator



City of Nashua – Risk Management Department

Administrative Services Division

229 Main Street, Nashua, NH 03060

Tel. (603) 589-3345

From: Maria Ulloa [REDACTED]
Sent: Monday, January 29, 2024 1:40 PM
To: Grassett, Kimberly <grassettk@nashuanh.gov>
Subject: Flag raising 2024

CAUTION: This email came from outside of the organization. Do not click links/open attachments if source is unknown.

Attached application for use of City Hall,

Sorry about that, here it is.

SPECIAL EVENT APPLICATION (2024)

Grassett, Kimberly

From: Grassett, Kimberly
Sent: Monday, January 22, 2024 9:15 AM
To: Maria Ulloa
Cc: Mayors Office Email
Subject: RE: Citizen Flag Pole Request
Attachments: SPECIAL EVENT APPLICATION.pdf

Categories: Awaiting Response

Good Morning Maria,

Attached please find the application for use of the City Hall Plaza. You will have to fill this out and return it to me to start the reservation process.

You will need to reach out to the Mayor's office to check on the Mayor's availability to attend the event. I have cc'd them on this email to get the process started.

If you're wishing to reserve a conference room or the auditorium for remarks, you will need to do so through the City Clerk's office. You can email them at CityClerkDept@NashuaNH.gov or call them at 603-589-3010.

Best,

Kimberly Grassett | Senior Risk Coordinator



**City of Nashua – Risk Management Department
Administrative Services Division**

229 Main Street, Nashua, NH 03060

Tel. (603) 589-3345

From: Maria Ulloa
Sent: Thursday, January 18, 2024 4:07 PM
To: Grassett, Kimberly
Subject: Citizen Flag Pole Request

CAUTION: This email came from outside of the organization. Do not click links/open attachments if source is unknown.

Hello Kimberly,

To celebrate 180 years of Dominican Republic's independence that falls on February 27th, we would like to request the opportunity to raise our flag to sing our national anthem as in past years, and at the same time, invite Mayor Jim Donchess to attend the celebration.

Due to last year's frigid conditions, if there is a conference room or similar space to have the opportunity to share words of our culture and traditions with the attendees and community, that would be greatly appreciated.

We request the following date and time:

Day: Saturday, February 17th

Time: 10am

Contact: María Ulloa, representative of Dominican Residents in Nashua, NH

Please feel free to contact me at [REDACTED] with any questions.

Thank you for your time,
Maria Ulloa

Redactions of personal
information pursuant to RSA
91-A:5 IV; disclosure would
constitute invasion of privacy.